

REMARKS

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The claimed invention refers to a thermoplastic molding composition that comprise at least one of two components namely A - graft rubber- and B -a rubber free vinyl resin. Both components contain structural units that are derived from acrylonitrile and both are characterized by the chemical distribution of the included AN. The characteristic material parameters, C_{50} and $(C_{90}-C_{10})$ are known in the art.

The invention resides in the finding that the processability of AN-containing grafted rubber and/or rubber-free vinyl resins is critically dependent on the recited chemical distribution.

The claims stand rejected under 35 U.S.C.112 second paragraph alleged to have failed to particularly point out and distinctly claim the subject matter regarded as the invention.

In response to the issue concerning the C_{50} value: the Applicants confirm that the recitation " based on the total graft shell" refers to A1. That is to say that the C_{50} value and the chemical distribution of AN that describe component A, refer to the AN content of A1, the graft shell. Respecting the explanation of the material parameters at issue and the definition in page 10 line 4 et seq., the applicants note that the chemical makeup and molecular weight of the grafted and free polymers are known to the art-skilled to be identical for all practical purposes. As the actual analyses of the grafted shell entails a tedious process of breaking up the rubber backbone without at the same time damaging the molecular structure of the grafted shell, only the properties of the soluble portion (the free molecular chains) are routinely determined.

Claims 1-10 stand rejected under 35 U.S.C. 102(b) as anticipated by Matsumura et al (U.S. Patent 4,478,982) or by Ott et al (U.S. Patent 4,009,227), or in the alternative, under 35 U.S.C. 103(a) over either of them.

The standard for anticipation is one of strict identity. To anticipate a claim for a patent, a single prior art document must contain all the essential elements of the claimed invention. In *Re Donohue* 226 USPQ 619. Set against this standard, neither Matsumura nor Ott that disclosed nothing relative to the chemical distribution of the acrylonitrile can be said to anticipate the present claims.

The initial amounts of AN disclosed by each of the cited Matsumura and Ott do not permit any conclusion relative to its chemical distribution as the distribution depends on the polymerization process. Yet the relevant products prepared by each of Matsumura and Ott have been prepared by methods that are largely similar to the ones used in the comparative examples of the present application- see A.II in page 13 and B.II in page 14. The Applicants therefore assert that the comparisons presented in the application are highly relevant as they enable comparison to the closest prior art. Instructively, the chemical distribution of the included AN resulting upon these processes yield values of 3.2% and 2.2% respectively, well below the cutoff value of 5% that is recited in the present claims.

Reconsideration and withdrawal of the rejections under section 102 and 103 over Matsumura and Ott are requested.

The claims stand rejected under 35 U.S.C. 102(b) as anticipated by, or in the alternative, under 35 U.S.C. 103(a) as obvious over Eichenauer et al (WO 98/54238).


Support for the stated rejections is the case of *In re RUSCETTA AND JENNY* (CCPA)118 USPQ 101 that held in connection with a substantially similar rejection that as to subject matter first disclosed and claimed in continuation in part application, applicant is not entitled to filing date of co-pending parent application but only to continuation's filing date. As to the rest of the disclosure the CIP is entitled to the filing date of the parent.

The only difference between the present application and the published parent refers to the included expanded explanation of the several chemical distribution parameters. As this explanation is entirely for the convenience of the reader and is in no way necessary for compliance with the statutory requirements, the Applicants are prepared to, and will upon the Examiner's instruction excise this explanation.

Reconsideration and withdrawal of the rejections over Eichenauer are requested.

Believing the above represent a complete response to the Office Action and that the application is in condition for allowance, applicants request the earliest issuance of an indication to this effect.

Respectfully submitted,

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